Supreme Court, U.S
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No.

IN THE

Supreme Court of the United States

R. & DIANA PAYNE-ALI,

Petitioners,

v.

ST. JAMES MUTUAL HOMES, INC.,

Respondent.

On Petition For Writ Of Certiorari To The
District Of Columbia
Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

R. & Diana Payne-Ali
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75pp

QUESTIONS PRESENTED:

1. Where defendants in a landlord and tenant case have been charged with 10 default charges; and where all discovery has been denied with the exception of 20 interrogatories; and where defendants are surprised at trial with a prejudicial and inflammatory exhibit that was not provided to them in the pre-trial discovery process, should a new trial have been granted?

2. Where the jury hears prejudicial and inflammatory hearsay testimony at trial, should the defendants have been granted a new trial?

3. Where defendants were part owners in a housing cooperative (St. James) and had complained to government officials about housing code violations at the cooperative *as a whole*, should a new trial have been granted because of plain error when the jury was instructed to consider retaliation only if they found that the defendants had contacted government officials about housing code violations in the defendants' *individual* housing unit?

4. Did the trial court loose jurisdiction because the defendants' filed a notice of appeal prior to filing a motion for a new trial?

5. Where there are over 20 misapprehensions and overlooks in the District of Columbia Memorandum Opinion and Judgment, did the Petitioners receive a fair review by the appellate court, since not one of the appeal judges voted to review en banc, the 20 misapprehensions and overlooks, cited and detailed by the Petitioners.

LIST OF ALL PARTIES

Petitioners herein are R. & Diana Payne-Ali. Respondent is St. James Mutual Homes, Inc.

The Plaintiff-Appellee below was St. James Mutual Homes, Inc., who has no parent corporation that owns 10% or more of the corporation's stock.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners, R. & Diana Payne-Ali, respectfully pray that a writ of certiorari issue to review the Memorandum Opinion And Judgment of the District of Columbia Court of Appeals entered in the above entitled proceeding on December 14, 1999, and the lower D.C. Superior Court decisions as well.

OPINIONS BELOW

The Memorandum Opinion and Judgment of the District of Columbia Court of Appeals dated December 14, 1999, is unpublished.

STATEMENT OF JURISDICTION

The Memorandum Opinion and Judgment of the District of Columbia Court of Appeals was entered on December 14, 1999 (App. A at A-2). The District of Columbia Court of Appeals Order denying appellants' *pro se* petition for rehearing en banc was entered on April 6, 2000 (App. A at A-1). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS

28 U.S.C.A. § 2111 On the hearing of any appeal or writ of certiorari in any case, the court shall give judgment after an examination of the record without regard to errors or defects which do not affect the substantial rights of the parties.

STATEMENT OF THE CASE

St. James Mutual Homes, Inc. (respondent) canceled the cooperative membership of Diana & R. Payne-Ali (Petitioners), after charging them with 10 alleged occupancy agreement defaults, and without affording them a hearing or an opportunity to have a lawyer present. The termination occurred immediately after the respondent adjourned the open portion of the July 19, 1995 board meeting (which the Payne-Alis had attended) and then secretly, at an unannounced, un-agendaed, closed meeting, voted to cancel the Payne-Alis'membership after the respondent had pretended to form a pack to work together with the Payne-Alis. The respondent, however, then deceitfully terminated the Payne-Alis' membership and brought suit, seeking possession of the Payne-Alis' cooperative dwelling unit. The procedural and factual details of this case are discussed below.

A. The Notice of Default.

On August 25, 1995, respondent served the Payne-Alis with a notice of 10 alleged occupancy agreement defaults, but provided no advance prior 10 day hearing, with a lawyer present if desired. The notice of membership termination included 11 demands the Payne-Alis had to comply with, within a ten (10) day period, in order to cure the defaults to the satisfaction of the respondent. The ten wide ranging alleged defaults involved multiple people, multiple events, and multiple written documents. The default charges were as follows: (1) Failure to recertify as required; (2) Refused access to member unit; (3) Failure to execute and/or provide executed

occupancy agreement; (4) Disrupted meetings of the board of directors and membership meetings; (5) Held themselves out untruthfully to HUD, contractors, D.C. government employees and others, as officials of the Cooperative; (6) Interfered with the Cooperative's contractual agreements by insisting that contractors stop work; (7) Instructed the Board of Directors (and harassed its officers with written communications to the Board, cooperative members, and government officials) to spend HUD funding in a manner inconsistent with law; (8) Made untruthful and derogatory ad hominem accusations against the HUD representative overseeing the repair/rehabilitation project for the cooperative; (9) caused the Cooperative to expend attorney fees for non-meritorious and frivolous litigation; and, (10) Caused the cooperative to expend attorneys fees in connection with their defaults.

Upon the expiration of 10 days, the respondent determined that the Payne-Alis had not cured the alleged defaults, and terminated their cooperative membership, subsequently filing suit for possession of the Payne-Alis' dwelling unit.

B. The Proceedings below.

1. ***Discovery Issues:*** Pursuant to a motion filed by the Payne-Alis, this Landlord and Tenant case was certified to the civil division of the District of Columbia Superior Court for a jury trial. On February 5, 1996, the Payne-Alis filed a *pro se* motion for full discovery pursuant to SCR-Civil 26-37. At the scheduling conference, in open court, Mr. Payne-Ali showed and expressed very good cause why full discovery should be granted, in order

to defend against the respondents' ten alleged default charges which all involved numerous events, contractors, government officials, board of director members, other cooperative members, and written communications and documents. But the trial judge, admittedly, without being familiar with the case at all, severely limited Appellants' right to full discovery, and granted the Payne-Alis just 20 interrogatories. (App. B at B-21). The trial judge denied all other discovery, including admissions, depositions, and production of documents, after the Payne-Alis believed at the time the trial court had granted them full disocvery 26-37, with the exception of only 20 interrogatories, instead of 40, as they had requested.

After receiving evasive, untruthful, and incomplete responses from the respondent to many of their interrogatory discovery requests, the Payne-Alis filed a Motion to Compel Discovery on May 24, 1996, which the trial court subsequently denied, finding that (A) the respondent had answered the interrogatories satisfactorily, and (B) as to the Payne-Alis' request for documents, the trial judge ruled that he ***had not authorized production of documents***, and ordered,

"... to the extent the Defendants motion seeks to compel the Plaintiffs' to respond to their requests for production of documents, that request shall be denied." (App. B at B-19).

On November 7, 1996, the trial court issued another order regarding discovery, stating that the respondents'

> ***"... proof at trial shall be limited to the extent that it has complied with defendants' discovery requests. Further, plaintiff is reminded that it has a duty to supplement discovery responses."***
> (App. B at B-16).

On day three of the trial, respondent admitted into evidence, an extremely inflammatory unsigned document regarding a meeting which was held on March 8, 1994 (plaintiffs' exhibit #R), that the Payne-Alis were totally unaware of, and that should have been provided to the Payne-Alis, prior to trial during the discovery process, but was not. Although the Payne-Alis objected to its admission, the trial judge allowed the documents' introduction at trial. Exhibit #R dealt with a meeting that the Payne-Alis supposedly disrupted, which related to plaintiff's default charge #4.

Prior to trial, during the discovery process, the Payne-Alis attempted to find out, from respondent, all meetings they had allegedly disrupted. In Appellants' Motion to Compel Discovery, interrogatory #4 asked:

> ***"State the dates of all meetings that it is alleged that the Defendants disrupted (Provide all documentation relating to this question, including but not limited to all tape or audio recordings of alleged incidents, board meeting minutes, written warning to Defendants, etc.)***

Respondent replied to the Payne-Alis' above outlined interrogatory #4 as follows:

"See Responses to Request for Production of Documents for any applicable documents. Mr. Payne-Ali has been disruptive at the following meetings: December 2, 1993, February, 1994 and May 10, 1994..."

But there was no mention of the inflammatory Exhibit "R" regarding a meeting on March 8, 1994. Pursuant to SCR-Civil 33(c) (Option to produce business records), respondent should have produced Trial Exhibit "R". Producing this exhibit for the first time at trial, constituting extreme surprise, and a TRIAL BY AMBUSH.

Consequently, the Payne-Alis had no way to prepare a defense upon its introduction at trial, since the trial judge only allowed, officially, 20 minutes per witness, for the Payne-Alis to defend against the 10 default charges, and had not allowed any production of documents.

Appealing to the District of Columbia Court of Appeals, the Payne-Alis argued that the trial judge erred and abused his discretion in denying Appellants all discovery except 20 interrogatories, with no production of documents, admissions, or deposition provisions, in a case where the Appellants had been charged with ten (10) alleged defaults, all of which involved numerous documents, numerous people, and numerous events.

As set out below, the Petitioners' brief to the appellate court, detailed the February 16, 1996 hearing where the Payne-Alis' motion for full discovery was considered, then severely limited by the trial court. The Payne-Alis' appeal brief quoted from the official court transcript,

exactly what Petitioner R. Payne-Ali had told the trial judge in support of his motion for full discovery, which was:

> *"I know these are very serious allegations; but I feel that Judge Weisberg sent it to the Civil Branch with jury trial provisions to give me the same privileges under Rule 26 through 37 for discovery. And, I would like the full range of my ability to question the attorney and the plaintiffs in this case to bring out the discovery information that I feel that I would need... to defend ourselves successfully in this matter, Your Honor."*

However, the District of Columbia Court of Appeals Memorandum Opinion and Judgment greatly misapprehended what the Petitioners asked for regarding discovery. Their Memorandum Opinion and Judgment erroneously states:

> *"Judge Canan held a hearing on that motion at which Mr. Payne-Ali's only request was that he receive twenty (20) interrogatories instead of ten, which the court granted. Mr. Payne-Ali did not request any other particular type of discovery."* (App. A at A-5).

The DCCA Memorandum Opinion and Judgment goes on to further misapprehend the facts of this case:

> *"In sum, we find that the trial court did not abuse its discretion where there is no indication in the record that the Payne-Alis ever explained to it why they needed production of*

> ***documents, or other discovery tools, in order to defend the possession action. This omission seems especially important in light of SCR LT Rule 10, which states that discovery in landlord-tenant cases should be limited to "Good cause shown" and granted "with due regard for the summary nature of the proceedings."***
> (App. A at A-7 and A-8).

The Payne-Alis, did in fact, explain why they needed production of documents and other discovery tools, and are puzzled over what more could have been stated, or what other "Good Cause Shown" could have been more forcefully suggested to the court, especially in light of the 10 so-called default charges themselves, and in light of what Petitioner R. Payne-Ali stated in open court on 2/16/96 regarding why the Appellants needed liberal discovery, which was grossly overlooked and misapprehended by the appeal court judges (Terry, Steadman, and Farrell).

2. ***Hearsay Issue:*** A jury trial proceeded to commence on November 18, 1996. On the second day of trial, the respondents' former board president, Michelle Shorter, greatly prejudiced and angered the jury against the Payne-Alis with her extremely (false) and inflammatory hearsay testimony, over the objections of the Payne-Alis. The false allegation was that Mr. R. Payne-Ali had supposedly blackened the eyes of a former board president. The trial judge, jury, and appeal court judges were all mistaken and confused by this hearsay testimony, which involved two alleged incidents and 2 people instead of 1 person and 1 alleged incident. This hearsay

testimony was a total misrepresentation of the facts, and never made a part of the case or alleged defaults. The trial judge allowed (over the many strong objections of the Payne-Alis) the respondents' counsel to interrupt his (the trial judge) questioning of the witness as to whether this was firsthand knowledge, and consequently, no clarification was ever made, and no instruction was ever given by the trial judge to the jury, to disregard this hearsay testimony.

Moreover, the incidents testified to by Michelle Shorter certainly **should have been excluded**, pursuant to the trial court's order, since **no information or meeting date for March 8, 1994 was ever provided in the discovery process** to the Payne-Alis concerning that alleged incident; nor was the other alledged incident at a Christmas party/meeting, involving allegedly Sarah Blackwell (a senior citizen). These two incidents got commingled as a single incident involving one person, due to the **confused hearsay testimony**, and interruptions.

3. ***Plain Error in the jury instructions:***

The jury's verdict was in favor the respondent after the jury found that (1) The respondent had properly followed the by-laws in terminating the Payne-Alis' membership (the respondents' bylaws do not provide for a hearing with a lawyer present, if desired, prior to termination) (2) The Payne-Alis were in default, (3) The Payne-Alis had received a ten day notice giving them an opportunity to cure the defaults, and (4) The termination was not retaliatory. However, the trial judge erroneously instructed the jury:

> *"If you find that the defendants, within 6 months preceding plaintiff's notice to terminate their membership in the cooperative, did any of the following: (1) Made oral or written requests for repairs necessary to bring the cooperative unit in compliance with current housing regulations; (2) Contacted appropriate officials in the District or Federal government, either orally or in writing, concerning housing violations which if confirmed would render the cooperative unit in noncompliance with the housing regulations;... You are to presume that retaliatory action has been taken by the plaintiff..."*

Instead, the jury instructions should have been whether the defendants (Petitioners) had complained to District or Federal officials about housing code violations at the St. James Cooperative as a whole. The instruction should not have been limited to the Payne-Alis' individual unit since the Payne-Alis were part owner of the entire cooperative. This jury instruction was plain error that had a substantial bearing and effect on the case, and thus created a miscarriage of justice, since the Payne-Alis had contacted many government officials, both on the Federal and District level, about housing code violations at the cooperative, generally.

> *"[T]he tenant is also a stockholder of the corporation owning and managing the entire premises..."*

Sun Terrace Manor v. Municipal Court, C.A. 3d739; 108 Cal. Rptr. 307 (1973)

As well, the respondent's bylaws

provides: the member may

> ***"... enjoy in common with all other members of the Corporation the use of all communnity property and facilities of the entire cooperative community."***

4. ***Trial Court erroneously believed it had lost jurisdiction to rule on a new trial motion:***

On December 3rd, 1996, the Payne-Alis timely filed a notice of appeal. On December 9, 1996, the Payne-Alis filed a *pro se* Motion for a New Trial. In their new trial Motion, the Payne-Alis argued (among other issues) that Trial Exhibit #R should have been provided to them during the discovery process, but was not; and the hearsay testimony of Michelle Shorter, which was heard and considered by the jury, greatly inflamed and prejudiced the jury against the Payne-Alis, and resulted in a trial by ambush.

However, the trial court denied the Payne-Alis' Motion for a New Trial in its Order dated January 18, 1997, erroneously stating that the trial court had lost jurisdiction to rule on the new trial motion since the Payne-Alis had filed a notice of appeal prior to filing their new trial motion. The trial judge went on to state in his order, that,

> ***"Assuming that the Court did have jurisdiction to hear such motions, it is the opinion of the Court that such motions are without merit and the Court would not be inclined to grant them."***
> (App. B at B-3).

REASONS FOR GRANTING THE WRIT

A WRIT OF CERTIORARI SHOULD BE GRANTED BECAUSE THE DISTRICT OF COLUMBIA COURT OF APPEALS HAS UPHELD THE D.C. SUPERIOR COURT'S JUDICIAL RULINGS THAT ARE IN CONFLICT WITH THE SPIRIT OF FREE AND OPEN DISCLOSURE OF RELEVANT FACTS PROVIDED BY THE FEDERAL RULES GOVERNING PRE-TRIAL DISCOVERY; AND BECAUSE THE OTHER ISSUES PRESENTED HEREIN HAVE DEPARTED SO FAR FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS.

I.

Discovery Rule Violations

The District of Columbia Court of Appeals incorrectly held that the lower trial court's refusal to grant the Payne-Alis liberal discovery was not "clearly unreasonable, arbitrary, or fanciful." (App. A at A-4). In so holding, the Court of Appeals has reached a decision that has upheld the lower courts' decision to deny all discovery except 20 interrogatories to the Payne-Alis, in a case where they had to defend against 10 charges. This lack of discovery effectively denied the Payne-Alis the ability to properly prepare their case and defense prior to trial, and resulted in a trial by ambush when hearsay testimony was given and a surprise inflammatory document was admitted into evidence that was never provided during discovery. The decision below cannot be reconciled with the spirit of the federal discovery rules, as held in Erskine v. Consolidated Rail Corp., 814 F.2d 266 (6th Cir. 1987). Accordingly, the decision below should be reversed, and this case should be remanded

back for a new trial.

In *Erskine,* the court found that the plaintiff was prejudiced by the introduction of documents not provided during the discovery process. The plaintiff had submitted an interrogatory requesting "any oral or written statement, account, report, memorandum or testimony concerning the incident in question (the malfunctioning of equipment on a railroad caboose which plaintiff contended caused personal injury to himself). But this information was never provided. Moreover, the plaintiff submitted a request for production of documents, also requesting all inspection and maintenance reports on the caboose in question. One document was produced by the defendant showing one inspection date only. Yet, the testimony given at trial by a witness for the defendant indicated that there was more than one inspection of the caboose. This testimony directly contradicted the information provided during discovery.

The plaintiff moved for a new trial on the grounds that he was prejudiced by the introduction of evidence not provided during the discovery process.

The court in *Erskine* found that they could not conclude that the plaintiff was not prejudiced because of information admitted at trial and testimony given that was not provided during discovery, and that called into question the credibility of the plaintiff. The Court found that the conduct of the defendant clearly deprived the plaintiff of the opportunity to develop the facts necessary to support his case, and that a

> *"...full, free and open disclosure of relevant facts which would expedite and promote the resolution of the disputed factual issues did not prevail in this case. We think neither the letter nor the spirit of the federal disclosure rules was satisfied.... [The records in question] should have been disclosed to the [plaintiff] a reasonable time prior to the trial... Failure to do so prejudiced the [plaintiff] and warrants a new trial."*

Erskine v. Consolidated Rail Corp., 814 F.2d 266 (6th Cir. 1987).

In the instant case, the Payne-Alis were, also, clearly denied information that should have been provided to them during discovery so that they could develop the facts necessary to prepare their case for trial. First, the trial judge unreasonably denied the Payne-Alis the discovery they needed in a case where there were 10 charges against them. Mr. Payne-Ali, at an oral hearing on his motion for discovery pursuant to SCR-Civil 26-37, told the trial court that full discovery was being requested in order to defend against the 10 charges leveled against them. But the trial judge obviously disregarded all that was said, and admitted by his own words, "... I don't know enough about your case right now" then denied all discovery except 20 interrogatories.

The Payne-Alis were further denied discovery by the respondent (St. James) when the respondent withheld the document they later admitted into evidence at trial as Exhibit "R". And, just as in *Erskine*, the Payne-Alis had submitted an interrogatory to the respondent asking for

the dates of all meetings that it was alleged that the Payne-Alis disrupted. The response to this interroatory #9 was:

> ***"See responses to request for production of documents for any applicable documents. Mr. Payne-Ali has been disruptive at the following meetings: December 2, 1993, February, 1994, and May 10, 1994"***

However, Exhibit "R" is a memorandum regarding a meeting which occurred on March 8, 1994, and written by the respondent's former board member. The memorandum depicts both the Payne-Alis as being physically aggressive and abusive. This inflammatory document called into question the very character and credibility of the Payne-Alis who were defending against the charge of "disrupting meetings."

Moreover, the Payne-Alis' pointed out in their Petition for a Rehearing En Banc many of the misapprehensions contained in the District of Columbia Court of Appeals Opinion and Judgment. Many of these misapprehensions related directly to the issue of discovery as to what the Payne-Alis had asked for in their motion for discovery and what Mr. Payne-Ali told the trial judge at the oral hearing regarding their need for discovery, which is set out below:

> ***"I know these are very serious allegations, but, I feel that Judge Weisberg sent it to the Civil Branch with a jury trial provision to give me the same privileges under rule 26-37 for discovery. And, I would like the full range of my ability to question the attorney and the plaintiffs in this case to bring out the discovery***

information that I feel that I would need in order for my wife and I -- and myself to defend ourselves successfully in this matter."

The D.C. Court of Appeals stated the following in their Memorandum Opinion & Judgment

"Judge Canan held a hearing on that motion at which Mr. Payne-Ali's only request was that he receive twenty (20) interrogatories instead of ten, which the court granted."
(App. A at A-5).

This was MISAPPREHENSION #7.

The Payne-Alis' Petition for Rehearing En Banc stated the real facts, as follows:

Contrary to what the Opinion and Judgment states, nowhere did Appellant R. Payne-Ali, *"ONLY REQUEST THAT HE RECEIVE TWENTY INTERROGATORIES INSTEAD OF TEN."* Nowhere in the record on appeal can this request by Appellant R. Payne-Ali be found. The truth of the matter is, Judge Canan, after first stating that he would give the Appellants *"the limit"*, Judge Canan, himself, limited the interrogatories to 20 interrogatories. However, Appellants did, mistakenly, think at the time they had been granted their motion for full discovery "PURSUANT TO SCR-CIVIL 26-37", when Judge Canan stated, *"...I'm going to allow discovery -- you'll be allowed the limit..."* (2/16/96 court transcript, page 11, lines 7 & 8). Appellants thought that meant as far as you can go or get, with the only exception of being given 20 interrogatories, instead of the 40 normally

permitted in civil cases, especially since L&T Superior Court Rule 10 provides that:

> ***"For good cause shown... the Court may authorize a party to proceed with discovery pursuant to SCR Civil 26-37."***

The D.C. Court of Appeals stated the following in their Memorandum Opinion & Judgment

> ***"Mr. Payne-Ali did not request any other particular type of discovery."*** (App. A at A-5).

This was **MISAPPREHENSION #8.**

The Payne-Alis' Petition for Rehearing En Banc stated the real facts, as follows: 'This statement is a totally false and a misleading misapprehension of the facts, since first, the appellants motioned the court for Discovery on 2/5/96, **PURSUANT TO SCR-CIVIL 26-37**, which covers Depositions, Interrogatories, Production of Documents, and Requests for Admissions, etc. Moreover, at the hearing on 2/16/96, Appellant R. Payne-Ali told the trial court...' (For text of Mr. Payne-Ali's statement, see page 15 and 16 of this petition for writ of certiorari.

The D.C. Court of Appeals stated the following in their Memorandum Opinion & Judgment:

> ***"... did not specify either what types of discovery they wanted or what purposes such discovery would serve."*** (App. A at A-7).

> ***"Further, the only documents requested***

> ***in the motion are unspecified ones "between plaintiffs and their attorneys."***
> (App. A at A-7).

These were <u>MISAPPREHENSION #9 & #10</u>.

The Payne-Alis Petition for Rehearing En Banc stated the real facts, as follows: (#9 & #10) 'Obviously, the appeals judges have misapprehended and overlooked significant parts of the record as it relates to the Appellants' attempts to <u>obtain FULL DISCOVERY;</u> the Appellants' <u>NEED for the discovery</u>; and the reasons given by the appellants at the 2/16/96 court hearing regarding why they should be granted full discovery; specifically, "***... for my wife and I -- and myself to defend ourselves successfully in this matter.***" (2/16/96 court transcript, page 9, lines 15-16.)'

Moreover, the Opinion and Judgment never mentions the other words that proceeded the phrase ***"between plainitffs and their attorney"***, which reads:

> ***"The court should grant my motion in order that I may prove malicious prosecution, discrimination, biasness, fraud".***

The D.C. Court of Appeals stated the following in their Memorandum Opinion & Judgment:

> ***"In light of the ... fact that the Payne-Alis did not raise this issue at the hearing, the trial court did not abuse its discretion by not granting discovery of those documents."***
> (App. A at A-7).

This was **MISAPPREHENSION #11**.

The Payne-Alis Petition for Rehearing En Banc stated the real facts, as follows: "The Appellants, Diana & R. Payne-Ali, filed their Discovery Motion **PURSUANT TO SCR-CIVIL 26-37** (see record on appeal, page 38, filed 4/10/98.) Contrary to misapprehension #11, at the hearing on February 16, 1996, in open court before Judge Canan, Appellant R. Payne-Ali, did, in fact, address the issue of discovery, stating,

> ***"Judge, Your Honor, can I say one thing about Ms. Blumenthal's representation of the ten questions per side. I would be very uncomfortable with that for the simple reason that we have been charged falsely with ten charges and since I am stating that I feel very positively that Ms. Bluementhal and the Board of Directors and the management team have entered into collusion to bring these charges, I feel that ten questions would certainly not permit me the range to prove these allegations.***
>
> ***I know these are very serious allegations..."***

(continuation of this quote can be found and read on pages 15 and 16 of the writ for certiorari.)

Certainly, a full and open disclosure of the facts did not occur, especially where the trial court had told the respondent that their proof at trial would be limited to what they had provided during discovery. Consequently, the Payne-Alis were greatly prejudiced by Trial Exhibit "R" which called into question the

character and credibility of both Payne-Alis. Under the circumstances, the Payne-Alis should be granted a new trial where full discovery is available to them, which is only just and fair, but was denied by the trial court and court of appeals.

II.

Hearsay Issue:

The District of Columbia Court of Appeals denied the Petitioners' Petition for Rehearing En Banc because no appellate judge called for a vote on the petition. The Petitioners pray that in the interest of fairness, justice, and to avoid a miscarriage of justice, the Supreme Court will do what the D.C. Appeals Court decided not to do, which is to review the Memorandum Opinion and Judgment of the D.C. Appeals Court, because of the 21 misapprehensions, especially relating to the hearsay issue.

The D.C. Court of Appeals stated the following in their Memorandum Opinion & Judgment:

> *"... Ms. Shorter thereafter testified twice that she had personally witnessed the confrontation..."* (App. A at A-9).

This was **MISAPPREHENSION #2.**

The Payne-Alis' Petition for Rehearing En Banc stated the real facts, as follows: "This is a misapprehension of the 11/19/96 testimony of Michelle Shorter. First and foremost, the judges and jurors throughout this case have wrongly believed that there was only one incident that Michelle Shorter

testified about, when in fact, Michelle Shorter's testimony concerned two separate people and incidents, which this confusion prejudiced the jurors, Judge Canan, and obviously, now the D.C. Appeal Court judges, John A. Terry, John M. Steadman, and Michale W. Farrell, as well.

Upon closer examination, the Appellate Court will realize that Michelle Shorter is referring to two separate incidents in her testimony. At one incident, Michelle Shorter was not there, at all, and did not witness anything, involving former board president Marion Mitchell occurring in March of 1994. (See plaintiff's trial exhibit "R" and page 11, line 22-25 of the testimony of Michelle Shorter dated 11/19/96.) The other separate incident was at an informal December Christmas party and meeting, involving a senior citizen, Sarah Blackwell. (See the official court transcript of Michelle Shorter's testimony, dated November 19, 1996, page 12, lines 15-21.)

Obviously, the D.C. Court of Appeals judges, and the trial judge, and the jury members, were all filled with passion, surprise, prejudice, and confusion on this issue, towards the Appellants. Because the trial judge allowed, over many objections by the Appellants to not accept this hearsay testimony, and Trial Exhibit #R, regarding an incident Michelle Shorter personally did not witness. This is in violation of Federal Rule 103(a)(1)(2), and 103(c), 103(d), and 802 (Hearsay).

The trial judge also erred when he did not rule on several of the Appellants' objections to Michelle Shorter's hearsay and other testimony, or ascertain for

certain if Michelle Shorter was making her testimony, regarding a physical confrontation with Marion Mitchell (who is not a senior citizen), on firsthand knowledge, where Appellant R. Payne-Ali supposedly blackened both of the eyes of former board president Marion Mitchell, which was a (100%) total lie. Although the Appellants objected to this hearsay testimony, the judge allowed counsel for the Appellee, Carol S. Blumenthal, to (shrewdly) interrupt him. And then Judge Canan and Attorney Blumenthal continued to question witness Michelle Shorter further (who was hostile to the Payne-Alis) without first determining whether she had given, or was continuing to give, hearsay testimony about Marion Mitchell.

The point of fact is, just the total opposite to the lie told by Michelle Shorter, because both Appellants R. Payne-Ali and Diana Payne-Ali were the ones assaulted by Marion Mitchell and Patricia Reardon, without any provocation whatsoever, all because Appellant Diana Payne-Ali was tape recording the 5 person get together, which included the Appellants Diana & R. Payne-Ali, Marion Mitchell, Patricia Reardon, and two other members the appellants had invited as observers, Ms. Luckek and Mrs. Jordan."

The D.C. Court of Appeals stated the following in their Memorandum Opinion & Judgment:

> ***"During cross-examination,*** Michelle Shorter ***admitted that she had not actually seen Ms. Mitchell after the incident to verify that she had two black eyes..."***
> (App. A at A-10).

This was MISAPPREHENSION #3 and MISAPPREHENSION #4.

The Payne-Alis' Petition for Rehearing En Banc stated the real facts, as follows: "Appellants are totally dumb-founded over these misapprehensions. (#3): The fact is, there was no cross-examination of Michelle Shorter ordered or included in the record on appeal. (#4) And further, this testimony by Michelle Shorter does not exist anywhere in the record on appeal, or anywhere else, because Michelle Shorter never made such a statement, or saw the incident. Appellants are shocked that the Appeals judges would have such a total mis-statement in their Opinion and Judgment as part of their basis for justifying their affirmation of the lower court's verdict."

The D.C. Court of Appeals stated the following in their Memorandum Opinion & Judgment:

> ***"However, Mr. Payne-Ali did not renew his hearsay objection..."***
> (App. A at A-10).

This was MISAPPREHENSION #5.

The Payne-Alis' Petition for Rehearing En Banc stated the real facts, as follows: "This is a big misapprehension because Mr. Payne-Ali did, repeatedly, renew his hearsay objection. See official court transcript dated 11/19/96 direct examination of Michelle Shorter, 1st objection: page 1, line 25; 2 objection: page 12, line 6; 3rd objection: page 12, line 22; 4th objection: page 12, line 24."

The D.C. Court of Appeals stated the following in their Memorandum Opinion &

Judgment:

> *"... the Payne-Alis do not explain how Ms. Shorter's testimony violated the court's order"* (App. A at A-10).

This was MISAPPREHENSION #6.

The Payne-Alis' Petition for Rehearing En Banc stated the real facts, as follows: "Due to this misapprehension and overlooked facts, the Payne-Alis refer the Court to Appellants' Brief, page 45, para. 2, in which the Appellants quote the trial judge's order which states,

> *"... plaintiff's proof at trial shall be limited to the extent it has complied with defendants' discovery requests." "*

The Petitioners feel that Federal Rule 103a(1)(2), 103(c), 103(d), and 802 (Hearsay) have been violated. In the interest of fairness, justice, and to avoid a miscarriage of justice, the Petitioners pray that the Supreme Court will do what the D.C. Appeals Court decided not to do since no judge voted for the Petitioners to have a rehearing en banc, which is to review the Memorandum of Opinion and Judgment of the D.C. Appeal Court due to their many misapprehensions and overlooks, and reverse the lower courts' decision and remand this case back to the lower court for a new trial.

III.

Loss of Jurisdiction

The trial judge should have considered the Petitioners' timely filed motion on its merits. He, as the trial judge, knew that a great miscarriage of justice took place in this case because the verdict was against the great weight of the evidence, and because of the other issues spelled out in the Petitioners' Motion for a New Trial. However, because he believed he had lost jurisdiction to rule because the Petitioners filed a notice of appeal prior to filing their motion for a new trial, he did not seriously consider the Petitioners' new trial motion, and because, as he stated in his order of January 18, 1997,

> ***" As a preliminary matter, the Court concludes that the defendants timely filed the motion for a stay of the judgment on December 3, 1996. However, the defendants also filed a notice of appeal on December 3, 1996. Thus, the Court concludes it is without jurisdiction to consider defendants' motions for a new trial.*** Smith, et. al. v. Pollin, 90 U.S. App. D.C. 178 (1952). (App. B at B-3).

A WRIT OF CERTIORARI SHOULD BE GRANTED SINCE THE DISTRICT OF COLUMBIA COURT OF APPEALS DECISION CONFLICTS WITH THE 5TH CIRCUIT'S DECISION TO GRANT A NEW TRIAL WHEN PLAIN ERROR LEADS TO SUBSTANTIAL INJUSTICE:
U.S.C.A. 28 § 2111 (Harmless Error)

IV.

Plain Error Issue:

The Petitioners strongly believe that the District of Columbia Court of Appeals Memorandum Opinion and Judgment contains yet another gross misapprehension on the part of the appellate judges Terry, Steadman, and Farrell, which stated:

> ***"The Payne-Alis allegations of error are simply not patent enough to survive such a standard of review."*** (App. A at A-9).

This was **MISAPPREHENSION #19.**

The record clearly indicates that the Petitioners repeatedly complained about the **whole cooperative** of St. James to government officials within six months preceding the termination of their membership, with trial exhibits from D.C. construction inspector Stanley Waite dated 7/1/95, along with the violation notices issued to St. James pursuant to the Payne-Alis' complaints (App. C at C-1); and the Payne-Alis' letter to Congresswoman Eleanor Holmes Norton dated 6/25/95(App. C at C-2). However, the Payne-Alis were complaining about housing code violations in the cooperative as a **whole**, not in their

individual cooperative unit. Yet, the jury was instructed to only consider retaliation if the respondent had canceled the Payne-Alis' membership within a six month period of the Payne-Alis having complained to government officials regarding their own, personal cooperative unit.

Consequently, the jury had no chose but to find that the Payne-Alis had not complained about their personal dwelling unit within the six month period of time.

Petitioners argue that the jury instructions are plain error because in so instructing the jury to determine if the Payne-Alis had contacted government officials about their individual, personal dwelling unit only, and not the cooperative as a whole, the instruction was an incorrect statement of the law and was probably responsible for an incorrect verdict, which led to substantial injustice. Fruge v. Penrod Drilling Co., 918 F.2d 1163, 1169 (5th Cir. 1990); Rodrigue v. Dixilyn Corp., 620 F.2d 537, 541 (5th Cir. 1980)

Although there was no objection to the jury instructions at the time of trial, because of the erroneous instruction, a miscarriage of justice has occurred and a new trial should have been granted by the trial judge.

> ***"But although no timely or proper objection was made, the court's error in instructing on a material issue may be a basis for a new trial when it is apparent that a miscarriage of justice may otherwise occur."***
> (emphasis added)

Cruthirds v. RCI, Inc., 624 F.2d 632 (1980) Sulzbacker v. Continental Casualty Co., 88 F.2d 122 (1937)

The United States Court of Appeals, Fifth Circuit wrote:

> ***"Of course, the failure of a party to object to an instruction does not preclude the court from granting a new trial if the court finds that the erroneous instruction may have resulted in a miscarriage of justice."***

Cruthirds v. RCI, Inc., 624 F.2d 632, 635 (1980)

Therefore, the Petitioners pray the Supreme Court will issue a writ of certiorari to review the entire record and reverse and remand this case back to the lower court for a new trial.

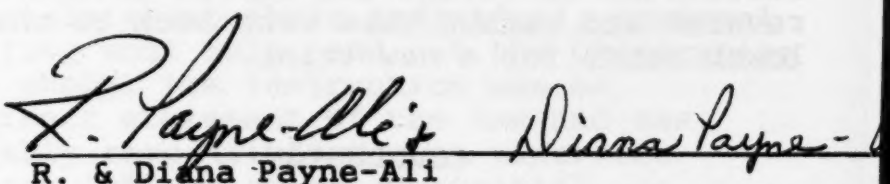
CONCLUSION

Because of the false, inflammatory, prejudiced, hearsay testimony, the jury had a 45 minute actual tape and 43 page transcript of the critical July 19, 1995 board meeting where the Payne-Alis' membership in the St. James cooperative was terminated, taking away their home of 28 years and property worth approximately $200,000.00 without compensation of any kind. The tape and transcript were admitted into evidence on stipulation by both parties, and there were 50 other admitted exhibits to review. But the jury came back in less than 2 hours with a verdict. And the D.C. appeal judges didn't even bother to listen to or examine these 2 smoking guns, at all, because of their overall "disposition" according to their Memorandum Opinion and Judgment, and especially since appellants from the D.C. Court of Appeals have no other circuit appeal courts to review lower court

decisions.

For the foregoing reasons, the Petitioners feel that this Supreme Court should vacate the judgments and decisions of the courts below and reverse and remand this case back for further consideration. Accordingly, the Payne-Alis respectfully request that their petition for a writ of certiorari be granted.

Respectfully submitted,



R. & Diana Payne-Ali
Pro se
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Appendix A

District of Columbia Court of Appeals

No. 96-CV-1800 and 97-CV-269
RUSSELL PAYNE-ALI, ET.AL.,
Appellants
LT49683-95

v.

ST. JAMES MUTUAL HOMES, INC.
Appellee.

BEFORE: Wagner, Chief Judge; Terry, Steadman, Schwelb, Farrell, Ruiz, Reid, Glickman, and Washington, Associate Judges.

ORDER

On consideration of appellants' *pro se* petition for rehearing en banc; and it appearing that no judge of this court has called for a vote on the petition for rehearing en banc, it is

ORDERED that the petition for rehearing en banc is denied.

PER CURIAM

DATE OF ENTRY:
APRIL 6, 2000

Appendix A

DISTRICT OF COLUMBIA COURT OF APPEALS

Nos. 96-CV-1800 & 97-CV-269
RUSSELL PAYNE-ALI, ET. AL.,
APPELLANTS

v. LT-49683-95

ST. JAMES MUTUAL HOMES, INC.
APPELLEE.

Appeals from the Superior Court of the
District of Columbia
Civil Division

(Hon. Russell F. Canan, Trial Judge)

(Argued September 28, 1999
Decided December 14, 1999)

Before TERRY, STEADMAN AND FARRELL,
Associate Judges

MEMORANDUM OPINION AND JUDGMENT

For an extended period Russell and Diana Payne-Ali ("the Payne-Alis) were at odds with St. James Mutual Homes ("St. James" or "the co-op"), the owner of a District of Columbia co-op in which the Payne-Alis resided for many years. Eventually, on August 25, 1995, the Payne-Alis received a letter indicating ten "defaults" in need of cure in order to avoid membership termination. Some of these defaults required affirmative action (*e.g.* executing an operating agreement,

recertifying, writing a letter of apology) while others required inaction (*i.e.* ceasing and desisting from various activities). The Payne-Alis acknowledge that they did not respond to the letter or take the actions requested. The co-op canceled the Payne-Alis' membership on September 4 and filed the instant action for possession in the Landlord and Tenant Branch on October 27, 1995. In defense, the Payne-Alis asserted that the termination was legally insufficient under St. James' own by-laws, that they were not in default in any event, and that the termination was a retaliatory action against the Payne-Alis for their community activism at St. James over the years. Upon the Payne-Alis request for a jury trial, the case was certified to the Civil Division pursuant to SCR LT Rule 6.

On November 22, 1996, the jury rendered a verdict in favor of St. James and judgment was entered accordingly. The jury indicated the following findings of fact on its verdict form: (1) the co-op board of directors properly terminated the Payne-Alis' membership; (2) the Payne-Alis were in default on their membership obligations at the time of termination; (3) the Payne-Alis received ten days notice and an opportunity to cure the defaults; (4) the Payne-Alis did not cure the defaults; and (5) the termination was not done in retaliation for the Payne-Alis exercising any of their legal rights.

The Payne-Alis appeal the jury verdict and claim that the trail court's order denying four post-trial motions. We turn to

each of the Payne-Alis' arguments.[1]

1. *Discovery:* The Payne-Alis argue that the trial court abused its discretion by limiting discovery to twenty interrogatories, denying their motion to compel discovery, and denying their motion for a trial continuance based on discovery issues. The trial court exercises broad discretion over discovery issues. Its discovery orders will only be overturned for abuse of that discretion by a ruling that is "clearly unreasonable, arbitrary, or fanciful." *Kay v. Pick,* 711 A.2d 1251, 1256 (D.C. 1998). Based on the record before us, we cannot conclude that the trial court's rulings were "clearly unreasonable, arbitrary, or fanciful." *Kay,* 711 A.2d at 1256.

Discovery is governed by court rules. It is limited in the Landlord and Tenant Branch by SCR LT Rule 10 which states: *"For good cause shown and with due regard for the summary nature of the proceedings,* the Court may authorize a party to proceed with discovery pursuant to SCR Civil 26 through

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[1] As a preliminary matter, we note that our analysis is restricted to the record before us on appeal. It is fundamental that an appellant bears the burden of proving to this court that the trial court committed error, and part of that burden is supplying a sufficient record on appeal to support the appellant's claims. *Cobb v. Standard Drug Co., Inc.,* 453 A.2d 110 (D.C. 1982). This court cannot go beyond the record or base its holdings on arguments made in the briefs but not substantiated in the record supplied. *Id.*

37 ... This Rule applies with equal force to all actions filed in the Landlord and Tenant Branch but subsequently certified to the Civil Division for trial scheduling pursuant to SCR LT Rule 6" (emphasis added). A party must formally request discovery by a motion to the court before it may be granted.

The Payne-Alis' motion for discovery stated: "The court should grant my motion in order that I may prove malicious prosecution, discrimination, biasness, fraud and collusion within the documents between plaintiffs and their attorney."

Judge Canan held a hearing on that motion at which Mr. Payne-Ali's only request was that he receive twenty (20) interrogatories instead of ten which the court granted. Mr. Payne-Ali did not request any other particular type of discovery. The parties were of course, free to voluntarily exchange information, as they in fact proceeded to do.[2]

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[2] St. James maintains that it produced all documents relevant to the case as if the judge had ordered document production. The Payne-Alis appear to accept St. James' claim that some documents simply do not exist because of bad record-keeping but demand in the motion to compel that St. James expressly admit that they do not. We do not know what St. James told the trial court about its document production or how the Payne-Alis responded since the record on appeal does not include St. James's opposition to the motion to compel (filed June 6) or the Payne-Alis' answer (filed June 11).

Appendix A

The Payne-Alis do not dispute the number of interrogatories, of which they served seventeen, but rather appeal the trial court's denial of their motion to compel on the grounds that St. James did not provide "complete, truthful, and unevasive" answers to the interrogatories. We find no evidence in the record that the trial court abused its discretion in ruling on the motion to compel as to the interrogatories. The record indicates that, before ruling on the motion, the trial court reviewed each interrogatory served and the answer provided by St. James and concluded that some of the interrogatories were not legally relevant to the possession action while the remainder were not incomplete on their face. Nonetheless, the trial court ordered St. James to produce the documentation it relied upon to answer the interrogatories so that the court could reconsider its order if necessary. When the court reviewed that evidence, it found no cause to reconsider its order. On this record, we cannot conclude that the trial court abused its discretion by denying the order to compel. In light of that conclusion, we must agree with the trial court that there was no purpose to be served by a trial continuance.

The Payne-Alis also argue that the trial court abused its discretion by not ordering production of documents, admissions, or other discovery tools in addition to the interrogatories.[3] On the

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[3] Because of this initial ruling, the trial court summarily denied the motion to compel as it related to document production.

record before us, we conclude that the trial court did not abuse its broad discretion by limiting discovery to the interrogatories. As mentioned previously, in their motion for discovery the Payne-Alis simply stated that they needed discovery generally in order to "prove malicious prosecution, discrimination, biasness, fraud and collusion within the documents between plaintiffs and their attorney." They did not specify either what types of discovery they wanted or what purposes such discovery would serve. Further, the only documents requested in the motion are unspecified ones "between plaintiffs and their attorneys." In light of the attorney-client privilege and the fact that the Payne-Alis did not raise this issue at the hearing, the trial court did not abuse its discretion by not granting discovery of those documents.

Finally, it is worth noting that discovery was not necessary to the extent that the Payne-Alis needed it to prove certain counter-claims against St. James since the court ruled, in reliance on SCR LT Rule 5(b), that those claims could not be amended to the instant case.[4]

In sum, we find that the trial court did not abuse its discretion where there is no indication in the record that the Payne-Alis ever explained to it why they needed production of documents, or other discovery tools, in order to defend the possession

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[4] None of the documents pertaining to this issue-the motion to amend, the opposition, the answer, or the order-are included in the record on appeal.

action. This omission seems especially important in light of SCR LT Rule 10, which states that discovery in landlord-tenant cases should be limited to "good cause shown" and granted "with due regard for the summary nature of the proceedings."[5]

2. *Jury Instructions:* The Payne-Alis argue that the trial court committed plain error by failing to instruct the jury *sua sponte* that (1) Maryland law required St. James to keep "correct and complete" minutes of its board of directors meetings, *see* Md. Code

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[5] We note in this context that the trial court's discretion regarding discovery is vested in individual judges, so the alleged "typical" practice of other judges is not determinative of the question of abuse of discretion. The Payne-Alis also point to language in an attorney practice manual as support for the proposition that the trial court abused its discretion by limiting discovery to interrogatories. This practice manual has no legal significance. Further, even if it did, the language cited by the Payne-Alis' does not support their argument. That language simply says that only certain of the discovery tools available under the civil rules are usually considered by LT judges; it does not say that judges typically order each of those types of discovery. The manual also specifically states that discovery is "not a right," that it is only available for "good cause shown," and that the "best practice is to include the proposed discovery in the motion so that the court can ascertain if the request is reasonable."

Ann., Corps. and Assocs. § 2-111 (1993); and (2) the Payne-Alis had an interest in the entire co-op, not just their own unit, as co-op members, *see Snowden, v. Benning Heights Co-op, Inc.*, 557 A.2d 151, 156 (D.C. 1989), and therefore St. James could not legally terminate them in retaliation for demands regarding any co-op property.

The Payne-Alis did not object to the jury instructions at trial, so we review only for plain error. *Knight v. Georgetown University*, 725 A.2d 472, 482 (D.C. 1999); *District of Columbia v. Banks*, 646 A.2d 972, 977-78 (D.C. 1994)(citing Sup. Ct. Civ. R. 51)(we will only upset the verdict if it is "apparent from the face of the record that a miscarriage of justice" has occurred as a direct result of the erroneous jury instruction). The Payne-Alis' allegations of error are simply not patent enough to survive such a standard of review.

3. *Admission of Testimony:* The Payne-Alis objected at trial to certain testimony offered by plaintiff's witness Michelle Shorter. In response to a question on direct about how the Payne-Alis had allegedly disrupted board meetings, Ms. Shorter testified, in part, that she had seen Mr. Payne-Ali attack former board president Marion Mitchell and "blacken" both her eyes. Mr. Payne-Ali objected on hearsay grounds at which point the trial court inquired as to the basis of Ms. Shorter's knowledge. Ms. Shorter thereafter testified twice that she had personally witnessed the confrontation. Accordingly, the trial court overruled the objection.

During cross-examination, Ms. Shorter admitted that she had not actually seen Ms. Mitchell after the incident to verify that she had two black eyes, suggesting that this limited portion of her testimony could have been stricken as hearsay.[6] However, Mr. Payne-Ali did not renew his hearsay objection, and the court was not obligated to act on its own initiative. At any rate, Ms. Shorter's initial indication that she saw the black eyes afterwards was effectively stricken by her own unambiguous testimony on cross-examination that she had not.

4. *Applicability of Maryland Law:* Pursuant to D.C. Code § 29-1141, a foreign corporation may operate a District co-op in accordance with its own bylaws and the laws of its home state, rather than the laws of the District. We applied this statute to membership terminations in *Snowden*, while leaving open the possibility that we might require the District's greater procedural protections if faced with a "compelling interest" to do so. (We found termination for failure to pay membership dues did not create such an interest in *Snowden)*. The

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[6] The Payne-Alis state in their brief that none of Ms. Shorter's testimony regarding the incident should have been admitted because it was not relevant to any default and because the judge previously ruled that St. James' proof at trial would be limited by its compliance with discovery. However, one of the defaults listed was "disrupting meetings," and the Payne-Alis do not explain how Ms. Shorter's testimony violated the court's order.

Appendix A

Payne-Alis make two arguments regarding the applicability of Maryland law and St. James' bylaws, as dictated by *Snowden*, to their termination.

First, the Payne-Alis argue that a "compelling interest" existed to require St. James to meet the procedural requirements of District law rather than Maryland law, specifically St. James' failure to keep accurate board meeting records (in violations of its own bylaws) and the bad faith nature of the co-op's actions. While sloppy minute-keeping at board meetings is hardly a subject of approbation, we do not believe it creates a "compelling interest" to apply District law. As for the "bad faith" allegation, it goes directly to the merits of the retaliation claim, upon which the jury found against the Payne-Alis.

Secondly, the Payne-Alis contend that D.C. Code 29-1141 did not apply to St. James because it was not acting "consistently with the laws of Maryland," and that St. James was thus automatically required to abide by District law in its internal operating procedures. This legal argument is based on the Payne-Alis post verdict factual discovery that St. James did not have a valid Maryland corporate charter from 1982-1997. The Payne-Alis sought a new trial on the basis of this evidence, but it was denied on the grounds that the Payne-Alis did not use "due diligence" to discover it as required by Super. Ct. Civ. R. 60(b)(2). *Wilson v. Halley Garden Assocs.*, 237 A.2d 265, 268 (D.C. 1999). See section 6 *infra*.

5. *Insufficient Evidence to Support Verdict:* A jury's findings must receive great deference as a matter of law. *Penn. Mutual Life Ins. Co. v. Abramson,* 530 A.2d 1202, 1208 (D.C. 1987)("when the issues of fact were tried by a jury, we may review the case only as to matters of law"). Accordingly, we review jury verdicts only to determine whether, looking at all evidence and making all reasonable inferences in the light most favorable to the winning party (St. James), any reasonable jury could have reached the verdict it did. *District of Columbia v. Murtaugh,* 728 A.2d 1237, 1240-41 (D.C. 1999). Even assuming this issue is properly before us,[7] we do not have before us the totality of the evidence presented at trial in order to engage in the requisite comprehensive review, see note 1 *supra,* and therefore have no basis to set aside the verdict.

6. *Post-Trial Motions:* The Payne-Alis filed four post trial motions: (1) a

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[7] In their brief, the Payne-Alis do not include the sufficiency of the evidence as one of their nine issues presented for review, or discuss the evidence in favor of St. James. However, they do state on their cover sheet that they are appealing from the verdict, intermittently state in their brief that the evidence was in their favor, and discuss the issue in their reply brief. They also raised it at oral argument. Given our disposition, we need not determine whether it is in fact properly before us.

motion for a new trial; (2) a motion for a McNeal hearing and jury trial demand; (3) a motion to alter and/or amend the judgment; and (4) a motion for relief from judgment and jury verdict. The trial court ruled against all four motions. In their brief, the Payne-Alis argue only that the trial court did not reach the merits but rather made an erroneous jurisdictional ruling, a position they adamantly maintained at oral argument, and demand that the motions be considered on their merits. The record indicates they have been. The trial court, although preliminarily indicating that it believed it lacked jurisdiction over the motions (since they were filed after the notice of appeal), expressly stated: "Assuming that the Court did have jurisdiction to hear such motions, it is the opinion of the Court that such motions are without merit and the Court would not be inclined to grant them." The trial court then went into great detail explaining why it considered the motions meritless as a matter of law.

For the foregoing reasons, after careful consideration of the Payne-Alis' arguments in light of the record before us, we conclude that the verdict of the jury and the judgment entered thereon must be

Affirmed.

For the Court:

/s/ Garland Pinkston, Jr., Clerk
Garland Pinkston, Jr., Clerk

DATE OF ENTRY:
DECEMBER 14, 1999

Appendix B

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
LANDLORD AND TENANT DIVISION

ST. JAMES MUTUAL HOMES, INC. Plaintiff	:	Docket No. 95-LT-49863
v.	:	
R. & Diana Payne-Ali, Defendants	:	

ORDER

This matter comes before the Court upon consideration of the following motions:

A. Motions for New Trial

1. Defendants' Motion For a New trial...Pursuant to SCR-Rule 59(a); New Trials; Amendment of Judgment, filed December 9, 1996;
2. Motion to Alter And/Or Amend the Judgment, filed December 11, 1996;
3. Motion For Relief From Judgment and Jury's Verdict, filed December 24, 1996;

B. McNeal Hearing Motions

4. Motion For a McNeal Hearing and Jury Trial Demand To Determine Disbursement of Monies in the Court Registry, filed December 5, 1996;
5. Motion for Reconsideration of Court Order Releasing Funds in the Court Registry Prematurely Before Consideration of Motion For a McNeal Hearing Using a Javins Defense; filed December 10, 1996;

Appendix B

C. Motion for Stay of Judgment

6. Motion for a Stay of the Judgment, filed December 3, 1996. Plaintiff filed an Opposition to Defendants' Post Trial Motions on December 13, 1996.

D. Motion for Reconsideration of Attorney's Fees

7. Motion For Reconsideration For Reasonable Attorney Pro Se Fees For Presentation of Bad faith Affidavits... And Court Costs, And to Amend Motion For Sanctions, filed January 13, 1997.

I. Procedural History

A trial was held in this matter and the jury rendered a verdict for plaintiff on November 22, 1996. At that time, plaintiff orally asked the Court for an Order releasing funds that were being held in the Court Registry stemming from a protective order issued by Judge Levie on January 2, 1996.[1] The judgment against defendants was docketed on November 27, 1996 by the clerk's office. The defendants then timely-filed the motions before the Court. On December 24, 1996, the Court issued an Order temporarily staying all

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[1] Defendants assert that the Court granted them 10 days to file a written objection to the release of such funds. Accordingly, in light of the fact that the Court granted the order before expiration of the 10-day period, the Court will decide the McNeal issue on its merits.

proceedings in this matter pending resolution of the pending motions. On January 2, 1997, this Court held a hearing on all outstanding motions.

A. Motions for a New Trial

As a preliminary matter, the Court concludes that the defendants timely filed the motion for a stay of the judgment on December 3, 1996. However, the defendants also filed a notice of appeal on December 3, 1996. Thus, the Court concludes that it is without jurisdiction to consider defendants' motions for a new trial. Smith, et. al. v. Pollin, 90 U.S. App. D.C. 178 (1952). Assuming that the Court did have jurisdiction to hear such motions, it is the opinion of the Court that such motions are without merit and the Court would not be inclined to grant them.

Having reviewed all pleadings submitted and the totality of the record, including representations at the post-trial motions hearing on January 2, 1997, the Court concludes that defendants have not set forth any new grounds not previously considered and rejected by the Court. To the extent that defendants have raised new legal claims, the Court concludes that defendants have waived these claims by failing to present them at the appropriate time in this litigation.[2]

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2 Liberally construing defendants' motion as being made pursuant to Rule 60 (b)(2), the Court concludes that defendants have not presented any newly discovered evidence which by due diligence could not have been presented at trial.

Finally, many of the claims asserted raise purely factual matters that were properly presented before the jury for resolution, which this Court will not disturb.

B. Motions For A McNeal Hearing

Distribution of funds in the court registry is an equitable proceeding separate and distinct from the underlying possessory action. Smith v. Interstate General Corp., 462 A.2d 1133 (D.C. 1983).

[D]ue process considerations entitle the tenant to present relevant and material evidence as to the extent to which the rental contract figure should be abated--if at all--due to violations of the Housing Regulations which might have existed during her [or their] continued use of the premises while the protective order was in effect." McNeal v. Habib, 346 A.2d 508, 514 (D.C. 1975).

Tenants may assert a defense to a possessory action for nonpayment of rent that housing code violations arose during the tenancy and therefore they may be entitled to an abatement of rent. Javins defense can be also used in a "possessory action based on a valid 30-day notice to quit" if it is raised in the context of a claim for retaliatory eviction. Habib v. Thurston, 517 A.2d 1,15 (D.C. 1985) (citations omitted). Defendants raised, in part, such a defense in the trial of this matter.

"It is clear that a tenant need not assert [housing] code violations in the answer to the possessory action to preserve

the right to that defense at a McNeal hearing." Id. at 18. To preserve a right for a McNeal hearing it is "sufficient for a tenant orally to notify the landlord and the court about code violations early enough, with sufficient specificity, to afford the landlord a reasonable time within which to prepare for the McNeal hearing." Id.

"In many cases the tenant will give a Javins notice at the initial hearing on the landlord's request for a protective order, since tenants commonly seek at that time to pay less than the monthly rent into the registry because of an alleged history of code violations continuing to the time of the complaint and summons." Id. at 19. However, if the tenant does not raise the issue at the time the protective order is entered, the Court of Appeals ruled that it is within the "sound discretion of the trial court to determine whether a tenant has given timely, specific notice of an intended Javins defense at the McNeal hearing." Id. at 19.

On January 2, 1996, the parties were before the Judge Levie in the Landlord Tenant court, inter alia, to litigate the setting of a protective order. The Court has reviewed an audio-tape of that hearing. Plaintiff made clear that the only purpose for seeking a protective order from its prospective was to avoid any interpretation that the cooperative was waiving any rights to possession by accepting presently due carrying charges. At that time defendants did not assert that there existed any extant housing code violations nor did they attempt to have the protective order reduced to reflect such housing code

violations. Bell v. Tsintolas Realty, 139 U.S. App. D.C. 101 (1970).

Accordingly, Judge Levie issued a protective order requiring defendants to pay $332 a month, the full monthly carrying charge, into the court registry. Indeed, the Court's review of the audio-tape of that proceeding indicates that the Payne-Alis conceded that "this matter does not involve rents or anything like that." Defendants presented no evidence indicating that they were seeking to utilize a Javins defense in regards to the protective order. In fact, Mr. Payne-Ali remarked to the Court regarding the issuance of a protective order, "Your Honor, like I said, there was never a question of money. We, I've lived at St. James for 27 years. I have never failed to pay my carrying charges..." Defendants had ample opportunity to raise a Javins defense but failed to do so at that time.

At the January 2, 1996 hearing, Judge Levie instructed defendants to set forth all defenses they may have to this action. In response, defendants submitted to the Court a copy of a newsletter they publish, which set forth defenses to six of plaintiff's claims, and filed several praecipes setting forth various defenses. The Court concludes those defenses were not adequate to put the plaintiff on notice of a Javins defense to the protective order. At best, the defendants put plaintiff on notice of a potential Javins defense with respect to windows, which were allegedly below housing code standards, and supposed shoddy workmanship on roof repairs of their building.

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Defendants in the instant motions have submitted the following list of deficiencies in an attempt to justify the need for a McNeal hearing: (1) asbestos exposure; (2) lead paint exposure from chipping and pealing paint; (3) unsafe windows installed in violation of D.C. Housing Code; (4) extensive bathroom tile deterioration and water damage leaking to downstairs unit; (5) broken window pane; (6) no soap dish; (7) unsafe roofs: new roofing material placed over rotten roof rafters infested with carpenter ants and termites; (8) all work in common areas of complex completed without the proper building permits having been obtained; (9) window air conditioners dangerously and improperly installed in windows at the complex, causing danger to defendants and defendants' children, as well as the public at large.

The only defects that arguably have been raised timely are numbers (3) and (7), relating to the windows and roof respectively. With regards to these claims this Court held a hearing on January 2, 1997, to determine if defendants were entitled to a McNeal hearing.

Defendants claim that the "stop work" order issued by Construction Inspector Stanley Waite support their claim that housing code violations existed in their dwelling unit. That assertion is without merit. The January 2, 1997 hearing revealed that the defendants are not claiming that any housing code violations existed concerning the windows currently in their unit. A proffer by Mr. Payne-Ali indicated that no such work has been done on the unit because a stop work order was

in effect. Mr. Payne-Ali in fact conceded that no such defects are present in his windows.

Further, defendants' made no showing of how any deficiencies that may have existed in the roof affect their apartment unit. A review of the entire record reveals that there is no evidence of any defects in the roof that affected defendants' dwelling unit that would justify a McNeal hearing.

The Court, with respect to items (1),(2), (4),(5),(6),(8), and (9), concludes, in exercising its discretion, that these items have not been raised timely enough to put plaintiff on notice with "sufficient specificity" to prepare for a McNeal hearing. Habib v. Thurston, 517 A.2d at 18. These claims were only submitted after defendants lost a bitterly contested jury trial. The defendants, who have been vociferous in asserting their rights in this litigation, have failed to do so here. The Court concludes that the defendants have failed to give timely, specific notice of an intended Javins defense at a McNeal hearing.

In fact, the Court finds that the current motions were not filed in good faith. It must be reiterated that defendants initially stated before Judge Levie this case was not a case about money and sought no abatement in their carrying charges. As further evidence of bad faith, the Court notes that defendants, who publish a newsletter called the St. James Informer, may have filed the instant motions in accordance with their promise that "THIS CASE MAY COST ST. JAMES A

MILLION DOLLARS OR MORE BEFORE IT IS ALL OVER WITH. BELIEVE ME." St. James Informer, 24th Edition, Dec. 4, 1996 (emphasis in original). Accordingly, the Court concludes that a McNeal hearing is not warranted and that the motions be denied.

C. Motion for A Stay

"To prevail on a motion for a stay, (1) a movant must show that he or she is likely to succeed on the merits, (2) that irreparable injury will result if the stay is denied, (3) that opposing parties will not be harmed by a stay and (4) that the public interest favors the granting of a stay." Barry v. Washington Post Co., 529 A.2d 319 (D.C. 1987) (numbers added).

The Court recognizes it "may exercise its discretion to grant a stay if the movant has made a substantial case on the merits. The court is not required to find that ultimate success by the movant is a mathematical probability and ... may grant a stay even though its own approach may be contrary to movants' view of the merits." Washington Met. Area, Etc. v. Holiday Hours, Inc., 182 U.S. App. D.C. 220 (1977).

[S]uch relief is preventative, or protective; it seeks to maintain the *status quo* pending a final determination of the merits of the suit. An order maintaining the *status quo* is appropriate when a serious legal question is presented, when little if any harm will befall other interested persons or the public and when denial of the order would inflict irreparable injury on the movant. There is substantial equity, and need for judicial

protection, whether or not movant has shown a mathematical probability of success. Id. at 223.

Analyzing the first factor, the Court concludes that the defendants have not shown a likelihood of success on the merits to warrant a stay pending appeal. The defendants have raised a host of issues in their motions for a new trial and a stay pending appeal. As noted above, many of the issues raised were questions of fact that were soundly rejected by the jury and do not merit interim relief.

Additionally, the Court concludes that the defendants have not articulated a credible position that indicates that they have a substantial case on the merits with a corresponding likelihood of success with regard to any legal issue that was properly raised at trial. With regards to the new issues that are being raised, the Court concludes these arguments have been waived because they could have been presented at trial, but were not.

With regard to factors two and three, the Court concludes that irreparable injury would result to defendants if a stay is not granted and that the plaintiff would be less hampered by an issuance of such a stay. A balancing of the public interest in permitting defendants to remain in their home is in equipose with the other cooperative members right to quiet enjoyment of the property. Thus, the Court concludes that a balancing of these factors weights in favor of defendants.

Again, "[w]hen the last three factors strongly favor interim relief, only a

'substantial' showing of likelihood of success, not a 'mathematical probability,' is necessary for the Court to grant a stay." Id. at 321, (citations omitted). After considering the record, the Court concludes that the last three factors do not "strongly favor interim relief." Further, assuming that the last three factors did "strongly favor" interim relief, the Court concludes that defendants have not even shown a "slight" chance of success on the merits. Accordingly, this motion is denied.

The Court will stay the effect of this Order until February 21, 1997, in order to allow the defendants the opportunity to seek appellate relief.

D. Motion for Reconsideration of Attorney Fees

Having reviewed the motion, the Court concludes that defendants' motion is without merit.

Accordingly, it is this 18th day of January, 1997, hereby,

ORDERED, that Defendants' Motion For a New Trial... Pursuant to SCR Rule 59(a); New Trials; Amendment of Judgment be, and it hereby is **DENIED**, and it is,

FURTHER ORDERED, that defendants' Motion to Alter And/Or Amend the Judgment be, and it hereby is, **DENIED**, and it is,

FURTHER ORDERED, that defendants' Motion For Relief From Judgment and Jury's Verdict be, and it hereby is, **DENIED**, and it is,

FURTHER ORDERED, defendants' Motion For a McNeal Hearing and Jury Trial Demand To Determine Disbursement of Monies in the Court Registry be and it hereby is, **DENIED**, and it is,

FURTHER ORDERED, that defendants' Motion For Reconsideration of Court Order Releasing Funds in the Court Registry Prematurely Before Consideration of Motion For a McNeal Hearing Using a Javins Defense be, and it hereby is **GRANTED** to the extent that the Court has determined the issue on its merits, and it is,

FURTHER ORDERED, that a stay of the Order shall remain in effect until February 21, 1997, and it is

FURTHER ORDERED, that defendants' Motion For Reconsideration For Reasonable Attorney Pro Se Fees For Presentation of Bad faith Affidavits... and Court Costs, And To Amend Motion For Sanctions be, and it hereby is, **DENIED**.

/s/ Russell F. Canan
RUSSELL F. CANAN
ASSOCIATE JUDGE
(SIGNED IN CHAMBERS

DATE OF ENTRY:
JANUARY 22, 1997

Appendix B

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
LANDLORD AND TENANT DIVISION

ST. JAMES MUTUAL HOMES, INC. Plaintiff	:	
	:	Docket No. 95-LT-49863
	:	Judge Canan
v.	:	Trial: 11/18/96
R. & Diana Payne-Ali, Defendants	:	

ORDER

This matter comes before the Court upon consideration of the following motions:

The Defendants' Motion for Judge Canan to Recuse and Remove Himself From Case #95LT049683, For Trial Continuance, For Ruling on Outstanding Motion, For Review of Discovery Documents, and For Amendment of Order, filed November 1, 1996;

The Defendants' Motion For Trial Continuance and to Continue Subpoenas on Two Witnesses, filed September 13, 1996, and the plaintiff's opposition thereto;

The Plaintiff's Supplemental Memorandum of Points and Authorities in Support of Plaintiff's Request for Summary Judgment, filed September 10, 1996, and the defendants' opposition thereto.

Recusal

Civil Rule 63-1(b) requires any party seeking to have a Judge recuse himself or

herself to file a certificate, signed by counsel, affirming that the recusal is being sought in good faith. "The lack of a certificate of good faith is, standing alone, a sufficient reason to deny the motion." Browner v. District of Columbia, 549 A.2d 1107, 1113 (D.C. 1988). The defendants have included no such certificate, therefore the motion is denied.

Even had the defendants complied with the certificate requirement of Rule 63-I, they have not met their burden of demonstrating bias. Legal rulings against a party do not constitute grounds for recusal. Id. "In order to warrant recusal, the movant must allege bias arising from a source outside the 'four corners of the courtroom.'" Burt v. First American Bank, 490 A.2d 182 (D.C. 1985) (*quoting* In re Evans, 411 A.2d 984, 995 (D.C. 1980)). "To be disqualifying the alleged bias and prejudice 'must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case.'" Burt at 188, (*quoting* In re Bell, 373 A.2d 232,234 (D.C. 1977)). The movants have made no such showing here, therefore the motion is denied.

Subpoenas

With regard to defendants' motion to continue subpoenas, plaintiff argues that the defendants have offered no legal authority for the proposition that the witnesses should be made available at the next trial date. "A subpoena when duly served, creates a continuing obligation upon the person subpoenaed to comply with

it until he is released by the court." In re Ragland, 343 A.2d 558, 559 (D.C. 1975). To date, the Court has not released any of the subpoenaed witnesses from appearing in the trial of this matter. Therefore, the defendants' motion is granted to the extent it seeks to have the subpoenas continued until the trial date. This ruling is contingent, however, upon proof that the subpoenaed witnesses were properly served pursuant to Rule 45 and that they receive reasonable notice of the continued trial date of November 18, 1996. The Court encourages plaintiff, to the extent feasible, to assist the Court and defendants in making the subpoenaed witnesses available.

Summary Judgment

Addressing the plaintiff's supplemental memorandum in support of its request for summary judgment, the plaintiff sets forth no new rounds not previously considered by the Court. Further, a reexamination of the relevant authorities indicates that although the defendants had the legal option to affirmatively bring suit to challenge the action of the Board, defendants are permitted to interpose as a defense whether they were in default of the Occupancy Agreement and, if they were, did the plaintiff properly follow its own procedures in adopting the resolution regarding the default and issuing the notice to the defendants of the alleged default. As noted previously, the Occupancy Agreement in this case is consistent with the case law and specifically provides that a landlord/tenant relationship exists between the parties. Clydesdale, Inc. v. Wegener,

372 A.2d 1013 (D.C. 1977) (Cooperative's failure to comply with its own By-Laws rendered Board's resolution ineffective as a defense to a suit for possession.) 1915 16th St. Coop. Ass'n v. Pinkett, 85 A.2d 58 (D.C. 1951); Green v. Greenbelt Homes, 194 A.2d 273 (Md. 1963).

Discovery

The Court has carefully reviewed the plaintiff's responses to interrogatories as well as the documents submitted in response to the Court's Order of August 29, 1996. The Court concludes that defendants' discovery requests have been satisfied. The Court notes, however, that plaintiff's proof at trial shall be limited to the extent that it has complied with defendants' discovery requests. Further, plaintiff is reminded that it has a duty to supplement discovery responses.

Continuance

Upon consideration of the defendants' motion for a continuance of the trial date, the Court concludes that there is no basis for a continuance.

Amendment of Order

The plaintiff has offered no basis for the Court to amend its Order of August 29, 1996.

Accordingly, it is this 7th day of November, 1996, hereby
ORDERED, that the Defendants' Motion for Judge Canan to Recuse Himself From Case#95LT049683, For Trial Continuance, For Ruling on Outstanding Motion, For Review of

Discovery Documents, and For Amendment of Order be, and it hereby is **DENIED**, and it is,

FURTHER ORDERED, that Defendants' Motion For Trial Continuance and to Continue Subpoenas on Two Witnesses be, and it hereby is, **GRANTED IN PART and DENIED IN PART**, and it is,

FURTHER ORDERED, that Plaintiff's Supplemental Memorandum of Points and Authorities in Support of Plaintiff's Request for Summary Judgment, to the extent it can be construed as a motion for reconsideration be, and it hereby is, **DENIED**, and it is,

FURTHER ORDERED, that the defendants' Motion For Review of Discovery Documents be, and it hereby is, **GRANTED**, and the Court concludes that there is no discovery violation, and it is,

FURTHER ORDERED, that the Motion For Trial Continuance be, and it hereby is, **DENIED**.

/s/ Russell F. Canan
RUSSELL F. CANAN
ASSOCIATE JUDGE

(Signed in Chambers)

DATE OF ENTRY:
NOVEMBER 12, 1996

Appendix B

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
LANDLORD AND TENANT DIVISION

ST. JAMES MUTUAL HOMES, INC. Plaintiff	:	Docket No. 95-LT-49863
	:	Judge Canan
v.	:	Trial 9/23/96
R. & Diana Payne-Ali, Defendants	:	

ORDER

This matter comes before the Court upon consideration of Defendants' Motion to Compel Discovery, filed May 24, 1996, Plaintiffs' Opposition hereto, filed June 6, 1996, and Defendants' Reply to Plaintiff's Opposition, filed June 11, 1996.

On February 16, 1996, this Court granted Defendants' motion to conduct limited discovery in accordance with Superior Court Landlord and Tenant Rule 10, which provides for such relief "for good cause shown and with *due regard for the summary nature of the proceedings.*" Super. Ct. L&T R. 10 (emphasis added). On that date, the Court granted Defendants leave to serve twenty interrogatories on the Plaintiff. The Court did not authorize the Defendants to serve Requests for Production of Documents, however, the Court notes that in Defendants' interrogatories, the Defendants have sought documents relevant to the interrogatories. Furthermore, it appears from the record that Plaintiff has

responded to these requests, despite the fact that they were not authorized by the Court. Accordingly, to the extent the Defendants motion seeks to compel the Plaintiffs' to respond to their requests for production of documents, that request shall be denied.

Defendants' Interrogatories

Interrogatories 1-10, 16

The Court has reviewed these interrogatories, the Plaintiff's responses thereto, as set forth in Defendants' motion, and Defendants' objections thereto. Although the Court does not have before it the documents referred to in Plaintiff's responses, the Court cannot conclude from the record before it that Plaintiff's responses are evasive or incomplete. However, in order to complete the record, the Court shall Order the Plaintiff to produce the documents referenced in these interrogatories to the Court for its review within ten (10) days of the date of this Order. If it appears to the Court upon review of these documents that the Plaintiff's responses are incomplete, the Court shall reconsider its ruling on the motion.

Interrogatories 12-15

The Court has reviewed these interrogatories and concludes that they are not relevant to this litigation, are not reasonably calculated to lead to the discovery of relevant evidence, or relate only to the counterclaims which the Defendants sought to assert against Plaintiff. As the Court denied Defendants'

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Motion to Amend Counterclaim and granted Plaintiff's Motion to Strike Counterclaim by Order issued this date, the Court concludes there is no good cause to compel Plaintiff to produce any documents or information regarding these claims beyond what has already been turned over to the Defendants.

Accordingly, it is this 29th day of August 1996, hereby,

ORDERED, that Defendants' Motion to Compel Discovery be, and it hereby is, **DENIED.**

/s/ Russell F. Canan
RUSSELL F. CANAN
ASSOCIATE JUDGE

(Signed in Chambers)

DATE OF ENTRY:
AUGUST 29, 1996

Appendix B

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION
Washington, D.C. 20001

St. James Inc.,
Plaintiff

Ca.No. 95-LT-049683

v.

Payne-Ali,
Defendant

ORDER

(Handwritten)

Upon consideration of the motion for discovery & restoration of cooperative privileges filed by defendants and after hearing argument on behalf of all parties concerned, it is, by the Court, this 16th day of February, 1996,

ORDERED that the motion be, and it is hereby GRANTED in part and DENIED in part, for reasons stated in open court. Discovery allowed but limited to 20 interrogatories. Restoration of cooperative privileges is DENIED at this time.

/s/ Russell F. Canan
Signed in open court

DATE OF ENTRY:
FEBRUARY 16, 1996

Appendix C

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION

July 10,1995

Charles I. Bryant FAIA
Bryant and Bryant
4201 Connecticut Ave. N.W.
Suite 200
Washington, D.C. 20008-2390

Dear Mr. Bryant,

Following a complaint from Mr. R. Payne-Ali and my inspection, all work on the St. James Mutual Homes Project must be stopped until the architect or engineer can prove that the rafters and load supporting members are safe at this site.

Section of Code Violated: Boca 1990 1101.1 & DCMR 110.1

The code official shall enforce all of the provisions of this code and shall act on any question relative to the mode or manner of construction and the materials to be used in the erection, addition to, alteration, repair, removal, demolition, installation of service equipment and the location, use, occupancy and maintenance of all buildings and structures, except as otherwise specifically provided for by statutory requirements or as provided for in Sections 110.2 through 110.8.

/s/ Stanley Waite
Stanley Waite
Construction Inspector

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June 26, 1995

Congresswoman Eleanor Holmes Norton
815 15th Street, N.W., Suite 100
Washington, D.C. 20515

R. Payne-Ali
220 O Street, S.W. #20
Washington, D.C. 20024
202-863-1110

Dear Ms. Norton,

I am a former president of the board of the directors of St. James Mutual Homes Inc. and current member of both the Buildings and Grounds and Finance Committee, of which, my wife is co-chair and acting chairperson of, after our former finance chairperson and board of director treasurer Patricia Reardon resigned 5 days ago (June 21, 1995) in protest of money being spent in an irregular fashion by our management office personnel.

In February of 1993, St. James was awarded a one and a half million dollar ($1,500,000.00) flexible subsidy loan to fix-up, or better still, cover-up, over 25 years of HUD neglect and mismanagement through their (HUD'S) failure to monitor and regulate our co-op project, with their full vested regulatory authority. And incidentally, we are not a (DPAH) District of Columbia Department of Public and Assisted Housing Property. Our coop was incorporated and funded under HUD's 221-(d)-3 program in 1967-68. And HUD started failing St. James members right from the

very beginning by signing off on, and approving the HUD funded rehabilitation work that was poorly, unprofessionally, and disgracefully done, leaving our co-op members with leaky roofs (right from the very beginning) and a whole laundry list of other poor rehabilitation work performed under the loan, which included decaying ceilings, walls, and floors. This has been the principle cause of 25 years of our project's deterioration.

HUD Headquarters and their local field office have, admittedly, known about this condition since 1975 (see attached copy of HUD's inspector general Charles G. Hayne's letter dated April 29, 1975. However, HUD chose to do nothing about the deterioration until now, (20 (St. James) deteriorated years later. And HUD broke federal registry rules and regulations because they approved the 1993 $1,500,000.00 loan under extremely fraudulent conditions and circumstances. And the members of St. James had absolutely no input whatsoever in the management improvement (MIO) plan. It was all done by our property manager, Jeff Turner, who was hired illegally, and with no HUD prior approval, as is required. The MIO plan was not presented properly to our co-op members, nor was it left in our business office for review for the full (15) days, as is required under the federal registry's guideline rules. In addition to this, the MIO plan was hand-carried into the HUD local field office four days late, which was another violation of federal registry rules, and unfairness to other applicants who had submitted their MIO plans on time. Below are some of the sad results:

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1. Our 107 member unit families, most of which are seniors, who bought into St. James as homeowners and have been paying for their units for almost 30 years now, are being faced with paying back a $1,500,000.00 flexible subsidy loan, that we were initially told was a grant.

2. Our senior and other St. James members were told to take their air conditioners from the natural air conditioning (sleeve) openings we once had, which were then hurriedly bricked up in November of 1994 in order to force us to accept a $700,000.00 heating and air conditioning (HVAC) system in order to replace our radiator heat system that is in excellent condition, and only needs to be balanced with additional water circulating pumps added, and thermostatically controlled cut-off valves installed on all radiators.

3. Our so-called new roofs that have been installed and paid for at a cost of $129,000.00, but are (once again) leaking already from poor, unprofessional workmanship, causing damage.

4. All of our storm drains and downspouts were hurriedly removed, with no replacement wood for the rain-soaked and termite infested frames. The downspouts and drains, that catch the rain water, were not even in stock at the time the old drains and downspouts were <u>hurriedly and unwisely</u> removed. Now our porches, furniture, carpeting, plants, and other belongings are being destroyed, as well as the rain water coming into some of the apartment units themselves.

5. Lastly, but certainly not the least,

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778 cheap vinyl windows are being unprofessionally installed over rain-soaked termite infested wood frames to quickly cover-up the evidence of 25 years of their (HUD's) neglect and poor monitoring.

And there are many, many other issues relating to the St. James board of directors not including the members into the co-op business affairs for years, with HUD's full knowledge and failure to correct the problems here at St. James. HUD could have corrected these problems under their regulatory authority, but didn't and haven't for over 20 years. My wife and I have contacted over 25 high HUD officials for the past 2½ years, including the offices of Mr. Henry Cisneros and his chief counselor Mr. Frank Wing, whom I have had 3 sit down office visits with, with no real meaningful results. The HUD inspector general's office has been contacted, as well as has the congressional oversight committee. A representative from that committee's office, Ms. Demi Greatorex, forwarded our case to the inspector general's office, and she also suggested that I contact your office, which I am now doing.

Ms. Norton, the lives and investments of 107 families are at stake here at St. James Mutual Homes, with the prospect of a great many of our seniors never realizing the dream of home-ownership and never enjoying a mortgage free home due to fraud and HUD 25 years of neglect, cover-up, and poor monitoring over the years. Please review our petition signed by over 63 percent of our members. We would like for you to intervene (immediately) on our behalf by calling Mr. Henry Cisneros's

office to put an immediate stop to all construction work and payments under the MIO loan until a full and complete investigation can be conducted into the cover-up that is in progress, and continuing.

I am thanking you in advance for your immediate attention to this grave and important matter effecting the lives of 107 families of your constituent members living here at Saint James Mutual Homes, Inc.

Sincerely,

/s/ R. Payne-Ali
R. Payne-Ali
St. James, Finance
& Building & Grounds

Committee member

P.S.

The members of St. James, mostly seniors, had their carrying charges (illegally) increased by $17.00-$100.00 per member just one year ago in May of 1994, which represented a 25% increase in the monthly payments, we are now being faced with another 28.5 percent increase which will be, another, approximately $90.00-$100.00 per month increase, for a total of $165.00-$200.00 increase in the carrying charges in less than 18 months, all because of HUD's improper monitoring of this 221 (d)3 property, that they had full regulatory authority over, but has failed miserably in that responsibility over the past 25-28 years.